

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**ANGELA WEGENER, Mother,
Guardian and next friend of NOAH
WEGENER,**

Plaintiff,

vs.

DEAN E. JOHNSON,

Defendant.

CASE NO. 8:04CV347

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Motion to Alter or Amend (Filing No. 18) in which the Defendant asks the Court to reconsider its Memorandum and Order (Filing No. 17) denying the Defendant's Motion for Summary Judgment.

In his Motion to Alter or Amend, and his supporting brief, the Defendant misconstrues the Court's Memorandum and Order denying the Defendant's Motion for Summary Judgment. Contrary to the Defendant's assertions, I did *not* find (1) that a special interrogatory stating that Dr. Johnson met the standard of care in his treatment of Angela Wegener was required for the application of the doctrines of claim preclusion and issue preclusion, nor (2) that an explicit finding of lack of negligence was a prerequisite to the application of claim preclusion. In the Memorandum and Order denying the Defendant's Motion for Summary Judgment, I noted the lack of any special interrogatory or explicit finding of lack of negligence in the earlier litigation because the Defendant's brief in support of his Motion for Summary Judgment repeatedly asserted that the jury found Dr. Johnson "free of negligence" and "to have met the standard of care." Those assertions were simply not supported by the record.

I will not repeat the facts and analysis set forth in my earlier Memorandum and Order, and I find no reason to alter or amend any portion of that Memorandum and Order.

IT IS ORDERED:

1. The Defendant's Motion to Alter or Amend (Filing No. 18) is denied.

DATED this 16th day of June, 2005.

BY THE COURT

s/Laurie Smith Camp
Laurie Smith Camp
United States District Judge